

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

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|---------------------------|---|------------------------|
| United States of America, |) | <u>COURT REDACTED</u> |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | File No. 1:15-cr-183-3 |
| |) | |
| Rae Ann Rodacker, |) | |
| |) | |
| Defendant. |) | |

TRANSCRIPT OF SENTENCING

Taken at
United States Courthouse
Bismarck, North Dakota
May 7, 2018

BEFORE THE HONORABLE DANIEL L. HOVLAND
-- UNITED STATES DISTRICT COURT JUDGE --

APPEARANCES

MS. DAWN M. DEITZ
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FOR THE UNITED STATES

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FOR THE DEFENDANT

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1 (The above-entitled matter came before the Court, The
2 Honorable Daniel L. Hovland, United States District Court
3 Judge, presiding, commencing at 1:30 p.m., Monday, May 7, 2018,
4 in the United States Courthouse, Bismarck, North Dakota. The
5 following proceedings were had and made of record in open court
6 with the defendant present:)

7 - - - - -

01:30

8 THE COURT: We'll open the record in the case of
9 *United States of America versus Rae Ann Rodacker*. Here on
10 behalf of the federal government is Assistant U.S. Attorney
11 Dawn Deitz. Representing the defendant is Attorney Kerry
12 Rosenquist. Ms. Rodacker, how are you today?

13 THE DEFENDANT: As good as I can be, I guess.

01:30

14 THE COURT: This is scheduled as a sentencing hearing
15 on a drug conspiracy offense, actually three separate counts, a
16 conspiracy offense, possession with intent to distribute a
17 controlled substance, and a money laundering conspiracy charge.

01:31

18 I have before today reviewed the Presentence
19 Investigation Report, the Government's Sentencing Memorandum
20 and Supplement, the Defendant's Sentencing Memorandum, a number
21 of attachments and letters of support. I've also reviewed the
22 letters from medical professionals, particularly treating
23 physician at the University of Minnesota. Anything else that's
24 been filed?

01:31

25 MS. DEITZ: Not by the government, Your Honor.

1 MR. ROSENQUIST: Nothing, Your Honor. Thank you.

2 THE COURT: All right. And, Ms. Rodacker, were you
3 given the opportunity to review the Presentence Investigation
4 Report?

01:32

5 THE DEFENDANT: Yes.

6 THE COURT: And you've discussed that with your
7 attorney?

8 THE DEFENDANT: Yes.

01:32

9 THE COURT: Mr. Rosenquist, did you have any
10 objections to anything that's contained in the Presentence
11 Report?

01:32

12 MR. ROSENQUIST: Nothing, Your Honor. My client
13 tells me since this was prepared in April of last year, she has
14 moved, but I don't know that that's substantive, and certainly
15 the pretrial services officer would know about it. And I don't
16 need -- I don't think it needs to be updated today for obvious
17 reasons.

18 THE COURT: Ms. Deitz, did you have any objections?

19 MS. DEITZ: No, Your Honor. Thank you.

01:32

20 THE COURT: Are there any witnesses that intend to
21 testify here today?

22 MS. DEITZ: None from the government, Your Honor.

23 MR. ROSENQUIST: None, Your Honor. Thank you.

01:32

24 THE COURT: All right. Then I will give both sides
25 an opportunity to outline their recommendations for a sentence.

1 And when the attorneys are done, Ms. Rodacker, I'll give you an
2 opportunity to speak as well, as I'm required to do. Ms.
3 Deitz.

01:33 4 MS. DEITZ: Thank you, Your Honor. The defendant
5 pled guilty to Counts 1, 2 and 3; Counts 1 and 2 being drug
6 charges, and Count 3 being a money laundering charge. That's
7 outlined until the PSIR. We're dealing with an adjusted
8 offense level of 31, criminal history category score of II,
9 which gives us a guideline range of 121 to 151 months. Count 1
01:33 10 does carry a 120-month minimum mandatory.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 There have been some continuations of this sentencing
01:33 15 due to health issues of Ms. Rodacker. And, of course, the
16 government didn't object to that because we felt it was
17 appropriate for her to get the treatment that she needs while
18 on the outside.

19 But, nonetheless, [REDACTED]
01:33 20 [REDACTED] and we are recommending one-third off the low end of
21 the guideline range, that being 80 months incarceration, five
22 years of supervised release to follow and the applicable
23 special assessment fees. [REDACTED]

24 [REDACTED]
01:34 25 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
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 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
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 01:34 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]

18 Ms. Rodacker was intercepted by law enforcement
 19 because of a unique situation, for lack of a better term. Law
 01:35 20 enforcement was called because there was concerns of an
 21 overdose death at her residence, but it wasn't related to
 22 distribution of controlled substances by her. It was really a
 23 bit of a fluke, Your Honor.

24 And based upon what law enforcement saw during that,
 01:35 25 they did a search warrant of her property and found a

1 substantial amount of methamphetamine. And again, law -- she
2 did speak about those facts and circumstances to law
3 enforcement during her proffer. And that search warrant is
4 what comes about from Count 2.

01:35

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] Thank you.

9 THE COURT: Mr. Rosenquist.

01:35

10 MR. ROSENQUIST: Thank you, Your Honor. As the Court
11 is well aware, my client suffers from a variety of maladies.
12 She's got cystic fibrosis. She's had a double lung transplant,
13 and that was just days before her sentencing date that was
14 scheduled back in November of last year. Since that date --
15 well, excuse me. Prior to that date she also had some diet --
16 diabetes problems and which she still has today.

01:36

17 In preparation for the double lung transplant and
18 contrary to what law enforcement may think -- this is kind of a
19 fluke because it all happens at the same time. She had to have
20 all of her teeth removed to prevent anything from being
21 impacted in the future which would probably cause her lungs to
22 be rejected. Oftentimes, as the Court well knows, people lose
23 their teeth when they're methamphetamine addicts. This was
24 entirely a different reason. It was a medical reason, so she's
25 got dentures as well.

01:36

01:37

01:37 1 Her medications cause osteoporosis. She's recently
2 had a fracture of the arm during a fall because of the
3 osteoporosis. Probably would not have happened but for the
4 fact that she's on these heavy medications. Her medications
5 cost upwards to several thousand dollars a day, over a million
6 dollars a year, and this will be continual for the rest of her
7 life.

01:37 8 The medications also, Your Honor, are not symbiotic.
9 They're not synergetic. Actually, they work opposite to one
10 another. They don't work to enhance one another. Some of the
11 drugs that are good for the osteoporosis are detrimental to the
12 lungs and the diabetes, and vice versa is also present. The
13 drugs that are good for the lung transplant are not good for
14 the diabetes, not good for the osteoporosis.

01:38 15 That is why these time-release drugs are so critical
16 to be taken at the correct time. If they're not taken at the
17 correct time, if she misses a dose, she's in trouble.
18 Extensive lab work then has to be accomplished. She has to
19 virtually not start over again, but restart a regimen after she
01:38 20 gets balanced out.

01:39 21 Today before she came here she had to have blood work
22 done. That is because she's got an abdominal port and it shows
23 signs of infection. Regardless of what the Court does today,
24 she has to have that abdominal port taken out very shortly, in
01:39 25 the very near future. If the Court does not require her to

1 report to some kind of an incarceration facility today, they
2 want her in Minneapolis as soon as she can get there for that
3 procedure.

01:39 4 Based on that, Your Honor, I would ask the Court to
5 look at the sentencing guidelines under 5H1.4. This isn't an
6 ordinary case. It is very extraordinary. I have not dealt
7 with a case like this in the 27 years I have been practicing
8 law. It seems to me that if ever a case was written that 5H1.4
9 were to apply to, it would be this case.

01:40 10 I don't know when she was 14 years old, that she had
11 the forethought to think of the future that she was going to be
12 in today. She was rather rejected by pretty much everybody
13 that she knows -- knew and loved at the time, and she had a
14 boyfriend that introduced her to the marvels of
01:40 15 methamphetamine. She found, much to her surprise, that it
16 helped her breathe, as the antihistamine part of
17 methamphetamine would probably do. However, as the Court
18 knows, it's extraordinarily addictive, and to support that
19 habit, she started selling.

01:41 20 I was surprised, as I'm sure the Court was, at the
21 amount of money that she had in the safe and the amount of meth
22 she still had available. However, and as weird as it seems,
23 she was planning on going to get herself help utilizing the
24 money that she made from selling the methamphetamine so that
01:41 25 she could turn around and perhaps get the physical help she

1 needed for the -- her cystic fibrosis, which would have been
2 the double lung transplant.

3 Almost luckily the law enforcement interjected,
4 arrested her, took away her ability to have any drugs, because
01:42 5 if she had started using again, she would have been right back
6 in prison or in jail awaiting her fate with the federal court
7 and probably would not have survived.

8 But she's here today with having had the double lung
9 transplant, and if the Court reviewed Dr. Dunitz' letter, she's
01:42 10 still got some problems with the connections from the new lungs
11 to her brachial tubes. They have to be inflated periodically
12 with a balloon. It's a very invasive procedure. She's had it
13 done twice now, and she's probably going to have to have it
14 done a few times more. If that doesn't work, then a permanent
01:43 15 stent put in. The stent would require a lot more monitoring
16 because it looks like, you know, in past history the stent
17 would tend to get infected more than not having it. So she
18 still has a lot of problems.

19 And I believe Dr. Dunitz opined that the average
01:43 20 length that a person lives with transplanted lungs is about ten
21 years. Now, the transplanted lungs did not end her cystic
22 fibrosis, Your Honor. She still has that. And, again, she has
23 diabetes, she has osteoporosis, and she's taking a lot of drugs
24 for all those.

01:43 25 what to do. If she is sentenced by this Court, the

01:44 1 only possible place for her to go, because there's only one
2 federal medical center for women, that's in Carswell, Texas.
3 If she goes to Carswell, she can't go the circuitous route that
4 Air America sometimes takes people. They pick people up from
5 Cass County jail. They take them to Alabama, get some more
6 people, take them to Colorado, get some more people, end up in
7 Omaha, where they're -- I think they're there for two or
8 three weeks where they get indoctrinated, and then they go to
9 their facility. She probably wouldn't survive that because
01:44 10 these different places won't have the medical personnel trained
11 for a double lung transplant.

12 That leaves only two options. That'd be a direct
13 flight down to Fort Worth area, and they do have -- I checked
14 on it. They do have a major facility down in the Dallas-Fort
01:45 15 Worth area that does double lung transplants, so they would be
16 able to help her in case that she had any medical problems, so
17 a direct flight would probably be the best.

18 However, absent that, allowing her to self-report
19 would be second-best. I would ask the Court, though, to
01:45 20 consider at least until November, the one year time where her
21 medical team that knows her the best would be able to better
22 take care of her, not to have her go anywhere but back to her
23 own house until at least November and for whatever time after
24 that that the Court deems reasonable.

01:46 25 Her meth-using days, meth-selling days, Your Honor,

1 are over, and she knows that, and she fully embraces that. She
2 doesn't want to get into that cycle again. She's got so many
3 other health problems that meth is the least of her problems at
4 this particular point.

01:46

5 So with that I'd ask that the Court not sentence her
6 any more -- to any more time than what Mr. Gallant received,
7 and I think he was -- received just a sentence of credit for
8 time served. And perhaps his -- his part in the conspiracy was
9 a lot less culpable than my client's. However, again, she did
10 not set out at age 14 to end up here today. Thank you, Your
11 Honor.

01:46

12 THE COURT: Thank you. So, Ms. Deitz, how do you
13 read the letter from Dr. Dunitz from the University of
14 Minnesota concerning Ms. Rodacker's current medical issues?

01:47

15 MS. DEITZ: Insofar as what, Your Honor?

16 THE COURT: Well, what does placement for 80 months
17 in a federal prison do for somebody that's dealing with a
18 double lung transplant, along with complications associated
19 with that procedure?

01:47

20 MS. DEITZ: Well, Your Honor, it's -- it's
21 concerning. It's -- I'm empathetic to the situation, but as
22 this Court is well aware -- I understand where Mr. Rosenquist
23 is coming with his argument insofar as 5H1.4, but since we're
24 dealing with the minimum mandatory and working down from there,
25 the Court can only consider the 3553(e) factors.

01:47

1 I'm fine with a self-surrender with regard to this
2 particular case given that she did cooperate in the beginning.

3 I feel as though the government has been empathetic
4 from -- so far with her situation insofar as allowing the --
01:48 5 not objecting to the ongoing continuances in her case for her
6 to seek the medical treatment while on the outside and moving
7 forward with that medical treatment on the outside. But,
8 unfortunately, the law is what the law is.

9 THE COURT: Ms. Rodacker, I'm required to give you an
01:48 10 opportunity to speak here today, as well as the attorneys. If
11 there's anything you would like to say, you're free to speak.
12 If you have any questions, you're --

13 MR. ROSENQUIST: Before she has an opportunity, Your
14 Honor, if I may, Dr. Dunitz told me he was going to make
01:48 15 himself available until I called him up and told him otherwise.
16 If the Court would want any additional information from him, he
17 is standing by.

18 THE COURT: All right. Ms. Rodacker, if there's
19 anything you would like to say, you're free to speak.

01:49 20 THE DEFENDANT: I wrote a speech. Here's my speech
21 (indicating).

22 THE COURT: If you could pull that microphone over a
23 little closer to you.

24 THE DEFENDANT: Yeah, I just can't believe I'm even
01:49 25 here right now, so this is a lot. This is not -- it's not okay

1 that we all have to be here. I just want to apologize to
2 everyone that's here for the effect that I've had, and everyone
3 worked so hard to keep me alive. So I'm just ready to get
4 today over with and move on with fighting for my life with my
5 transplant and just being a mother, so --

01:49

6 THE COURT: So where are you living now?

7 THE DEFENDANT: Right now I live in Valley City.

8 THE COURT: Okay.

9 THE DEFENDANT: I live --

01:50

10 THE COURT: And where are you going for most of your
11 medical needs?

12 THE DEFENDANT: To the University of Minnesota in
13 Minneapolis. While I am there, I stay with my Aunt Pam. She
14 lives in Minneapolis, so I'm back and forth.

01:50

15 THE COURT: So how long were you hospitalized after
16 this procedure in November of 2017?

17 THE DEFENDANT: I was hospitalized only for a month
18 in the hospital, and then they moved me to -- I moved into the
19 Argyle Apartments, which are specifically made for transplant
20 patients. The apartments are right on the campus, right across
21 from the clinic that I would have to go to every day, so then
22 every day after my transplant, for three months I would go to
23 the clinic for testing and all the other procedures that they
24 had.

01:50

01:50

25 And then I was allowed to start heading back to my

1 home in January. They allowed me to start venturing far from
2 the hospital.

3 THE COURT: And what's the rate of rejection of
4 double lung transplants, according to the national data at
5 least?

6 THE DEFENDANT: I don't -- I don't like to hear those
7 numbers. I don't like to look at that. Compliancy with the
8 medication and treatment -- and I think every case is different
9 because I still have cystic fibrosis. Everybody's system -- I
10 take, you know, handfuls of enzymes before I eat to digest my
11 food. The enzymes affect the absorption of the transplant
12 medications, so there's still a lot of intestinal issues.

13 what Dr. Dunitz has explained is that rejection comes
14 from infections, or there could be chronic rejection, which is
15 why I get bronchoscopies every other month, to test the
16 cellular level. It's just -- there's a lot. what they've told
17 me is that my best chance of survival is just be completely
18 compliant with, you know, getting tested every week, every day.

19 Sometimes I'll -- like this morning I got tested.
20 Came here. Had to get that all set up here in Bismarck so I
21 could get my blood work done and sent back there. well, then
22 my coordination team looks at the information. They will call
23 me back today, by the end of the day, to let me know, hey, you
24 need to change this medication, you need to change this, up
25 this dose.

1 THE COURT: The coordination team in Minneapolis?

2 THE DEFENDANT: Correct. Yep.

3 THE COURT: Okay.

01:53 4 THE DEFENDANT: I have a transplant coordinator who I
5 talk to every other day. And then from that she'll say, okay,
6 we need you to get another lab done on Wednesday. And then
7 Wednesday, you know, they follow up. It's just -- and that's a
8 weekly thing, the labs and following up with -- until my body
9 regulates everything, and even at that they'll still want
01:53 10 monthly labs.

11 THE COURT: So what have they said about your
12 condition of cystic fibrosis and how it impacts the new lungs?
13 I mean, you --

01:53 14 THE DEFENDANT: The cystic fibrosis will not affect
15 the new lungs, okay? However, I still have cystic fibrosis in
16 my sinuses, and that's a problem because I have pseudomonas in
17 my sinuses, which I have a antibiotic-resistant strain of
18 pseudomonas, so it complicates it because the pseudomonas is
19 also aspergillus, which is a couple -- another infection that I
01:54 20 keep getting in my lungs.

21 So basically, you know, we're -- we're still trying
22 to keep the bugs out of my lungs, my old CF bugs. If they
23 infect my lungs, which they have -- right after the transplant
24 I had pseudomonas in them. Then they hook me up to IV
01:54 25 antibiotics and, you know, IV medication to try to fight the

1 bacteria.

2 But, you know, I'm supposed to have a mask on when
3 I'm out in public, at Walmart or wherever. Here I didn't feel
4 I needed to wear my mask, but -- and, you know, I've got to
5 wash my hands. I have -- they make me carry a backpack with my
6 pills, my, you know, hand sanitizer, face masks just to avoid
7 infection.

8 My body is immunosuppressed, and it's been -- I've
9 dealt with medical complications for my whole life, but this is
10 -- I traded one disease, essentially, for a whole nother. You
11 know, it feels like routine of medication that, yes, you know,
12 it's -- it just seems like a lot yet. For me --

13 THE COURT: So what difference have you felt in your
14 breathing, your normal, day-to-day, minute-to-minute breathing?

15 THE DEFENDANT: I can get up and shower and get
16 dressed, and I could not -- I couldn't do those things before
17 even. I was in bed. You know, I was on oxygen. I didn't
18 leave my -- I didn't leave my bed, so I can get up and
19 function. I still get tired, you know, very tired on things
20 that normal people don't really get tired, but I don't need my
21 oxygen. I don't cough up as much mucus. I can -- I can
22 breathe without the oxygen, and --

23 THE COURT: So who's all here in the courtroom on
24 your behalf today?

25 THE DEFENDANT: Quite a -- quite an array of people.

01:56

1 I have family. I have my biological dad. I have my Aunt Pam
2 and Uncle Jerry. I have my boyfriend and some friends from
3 church. I have my daughter and her biological dad and just
4 some close -- close family, friends. I have -- my step-dad is
5 here. My brother is here.

6 THE COURT: So who do you live with in Valley City?

7 THE DEFENDANT: Myself. Now I live with myself.

8 THE COURT: In an apartment or in a house, or --

01:57

9 THE DEFENDANT: I live in a house. Landlord in
10 Valley City, he has many places that he rents out. I live in
11 his basement. He rents out the basement of his house. It's a
12 very, very nice house. And given the fact that I am not able
13 to work yet, so I'm on disability and have a limited -- you
14 know, I can't rent -- and I'm also now a felon. Nobody, you
15 know, wants to rent to -- it's hard.

01:57

16 So this -- my landlord, yes, I live in the basement,
17 and the rent is what I can afford on my disability. He is --
18 he's an older man that works all the time on his rental
19 properties, and obviously he knows about this whole situation.
20 He would be here if he, you know, didn't have to work all the
21 time, but he's --

01:57

22 THE COURT: Are you able to drive?

23 THE DEFENDANT: I am able to drive, yep.

24 THE COURT: And you have a car?

01:58

25 THE DEFENDANT: I do have a car, yep.

1 THE COURT: Anything else you wish to say?

2 THE DEFENDANT: I -- I really -- I don't know. I'm
3 just ready to move on with -- you know, with the sentence. And
4 so much -- so much has changed since I was put on pretrial
01:58 5 supervision to now that -- you know, I didn't think I was going
6 to be even able to make it here. Like I was actually on my
7 death bed, so the Court has been very -- you know, I wouldn't
8 -- I wouldn't be here hadn't they allowed me to get the
9 transplant. And what are the chances that I got the transplant
01:58 10 and that I lived through it? I don't -- that is the grace of
11 God. That's not anything that I -- you know, that I have been
12 able to control, so --

13 THE COURT: And you've been on release since December
14 of 2015?

01:59 15 THE DEFENDANT: Correct.

16 THE COURT: When's the last time that you used street
17 drugs?

18 THE DEFENDANT: It will be November 31st of -- so
19 it's -- two-and-a-half years it's been. I have the app on my
01:59 20 phone that has the exact amount of days, but --

21 THE COURT: November 30.

22 THE DEFENDANT: November 30, correct.

23 THE COURT: Of 2015?

24 THE DEFENDANT: Yep.

01:59 25 THE COURT: Anything else either counsel wished to

1 say?

2 MS. DEITZ: No, Your Honor. Thank you.

3 MR. ROSENQUIST: Nothing. Thank you.

4

01:59

5

6

7 THE COURT: And there's a ten-year mandatory minimum
8 on Count 1?

9 MS. DEITZ: Correct, Your Honor.

01:59

10

THE COURT: Five years on Count 2?

11

MS. DEITZ: Correct, Your Honor.

12

13

14

02:00

15

THE COURT: All right. Well, I've reviewed the
16 Presentence Investigation Report and the other materials that I
17 previously identified, all of which are incorporated by
18 reference into my judgment. We're dealing in this case with an
19 offense level of 31, a criminal history category of II. The
20 advisory guideline range is 121 to 151 months.

02:00

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02:00

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